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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:
ACE FINANCIAL CORPORATION,
Debtor.

Case No. 10-11289-B-11
Chapter 11
DC No. KDG - 13
Date: May 5, 2010
Time: 3:00 p.m.
Place: Bankruptcy Court
1300 18th Street, Suite A
Bakersfield, California
Judge: W. Richard Lee

MOTION FOR ORDER AUTHORIZING SALE OF REAL PROPERTY
(7801 WALPOLE, CALIFORNIA CITY, CA)

ACE FINANCIAL CORPORATION. ("Debtor"), respectfully represents:

I. Introduction

1. Debtor filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code on February 10, 2010. Debtor has managed its affairs as debtor-in-possession since the petition date.

2. Debtor owns a duplex located at 7801 Walpole Avenue, California City, CA 93505, Kern County Assessor's Parcel Number 299-062-30-7 (the "Real Property").

3. Debtor requests authority to sell the Real Property to an unrelated third party for \$85,000.00. Debtor believe that this is the market value of the Real Property. Mission Bank

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claims a perfected security interests in the proceeds of the sale, but agrees that Debtor may sell the Real Property under the terms and conditions described in this motion.

II. Liens against the Real Property

4. Prepetition, and as part of its normal business operations, Debtor made a construction loan to the builder of the home on the Real Property. The construction loan was secured by a deed of trust against the Real Property in favor of Debtor. Debtor took title to the Real Property after completing a non judicial foreclosure and sale under its deed of trust.

5. The Real Property is subject to the following claims of lien:

Name	Nature of Security Interest	Amount of Lien
Kern County Tax Collector	Real Property Taxes	\$8,292.43
Mission Bank	UCC-1	\$1,158,829.43

6. Mission Bank asserts an interest in the proceeds received from the sale of the Real Property pursuant to its Business Loan Agreement, the Promissory Note, and Commercial Security Agreement with Debtor. Mission Bank filed a UCC-1 Financing Statement with the California Secretary of State on or about December 22, 2003, and a continuation on November 6, 2008, to perfect its security interests as provided in the Business Loan Agreement and Commercial Security Agreement. Copies of the UCC-1 Financing Statements filed by Mission are attached as Exhibit "B" to the Exhibits.

7. The real property taxes are unpaid from tax years 2007, 2008, 2009.

III. Offer to Purchase

8. Debtor received an offer from Burdette A. Baylis ("Buyer") to purchase the Real Property for \$85,000.00. Debtor has no connection with Buyer or persons related to Buyer and Buyer is a "disinterested person" as defined in 11 USC Section 101.

9. Buyer's offer was obtained with the assistance of a real estate broker, IMC Funding Real Estate ("IMC"). Debtor agreed to pay IMC a six percent commission upon the sale of the Real Property, which makes the brokerage fees arising from the proposed sale price about \$5,100.00. Debtor filed an *Application by Debtor for Order Authorizing Employment of Real Estate Broker-IMC Funding Real Estate* on March 8, 2010. Debtor believes that six

1 percent is a standard commission for the sale of residential real property, and is a reasonable
2 fee to pay IMC for its services. The broker commission will be paid out of escrow from the
3 proceeds of the sale. In addition to the broker commissions, other customary closing costs will
4 be paid out of escrow from the proceeds of the sale.

5 10. A copy of the California Residential Purchase Agreement and Joint Escrow
6 Instructions and the Counter Offer No. 1 is attached as Exhibit "A" to the *Exhibits in Support*
7 *Motion for Order Authorizing Sale of Real Property (7801 Walpole Avenue, California City,*
8 *CA)* filed concurrently herewith ("the Exhibits"). The offer requires Seller to pay not more
9 than \$3,150.00 of Buyer's closing costs and \$5,000.00 for repairs necessary to have the
10 property in workable and living condition.

11 11. The offer to purchase the Real Property is subject to higher and better bids
12 received at the time of the hearing.

13 **IV. Distribution of Proceeds**

14 12. Under the Agreement with Mission Bank, the net proceeds received from the
15 sale of the Real Property after paying customary costs of sale, sales commissions, and the real
16 property taxes owed to the Kern County Tax Collector, will be split between Mission Bank and
17 Debtor. Mission bank will receive 85% of the net proceeds out of escrow, and Debtor will
18 receive 15% of the net proceeds.

19 13. The distribution of proceeds described above is consistent with the *Second*
20 *Order Authorizing Use of Cash Collateral* and the *Stipulation Between Mission Bank and Ace*
21 *Financial in Support of Second Motion by Debtor for Authority to Use Cash Collateral.*

22 **V. Argument**

23 14. Debtor requests authorization to sell the Real Property under 11 USC Sections
24 363(b)(1).

25 15. Under 11 U.S.C. section 363(b)(1), the Debtor may use, sell, or lease, other than
26 in the ordinary course of its business, property of the estate. The Debtor's decision to sell,
27 which is outside of the normal course of its business, must be based on its reasonable business
28 judgment. *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th cir. 1986). The court

1 may approve the sale if the Debtor establishes “some articulated business justification” for the
2 transaction. *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983). *In re Lionel Corp.*, 722
3 F.2d 1063, 1070 (2d Cir.1983); *In re Walter*, 83 B.R. 14 (9th Cir. BAP 1988); *In re Ernst Home*
4 *Ctr.*, 209 B.R. 974, 979 (Bankr. D. Wash. 1997). Furthermore, the Bankruptcy Court can
5 authorize a sale of an asset of a Chapter 11 estate before the acceptance of and outside of a Plan
6 of Reorganization “when a sound business purpose dictates such action.” *In re Stephens*
7 *Industries, Inc.*, 789 F. 2d 386, 389-390 (6th Cir. 1986); *see also In re Lionel Corporation*, 722
8 F.2d 1063, 1070 (2d Cir. 1983).

9 16. These facts constitute an “articulated business justification” for the transaction.
10 The sale of the Real Property is outside of the ordinary course of business conducted by
11 Debtor. Debtor believes the sale of the Real Property before confirmation of a Plan of
12 Reorganization is justified, in the best interest of the estate, and a sound business decision
13 because: (1) Debtor is no longer engaged in the business of hard money lending as it has been
14 in the past; (2) the Real Property is not needed to support Debtor’s business; (3) Debtor intends
15 to liquidate its assets in order to pay its creditors; (4) Debtor must sell all of the real property
16 owned by it in order to fund its plan; (5) Debtor does not wish to lose the opportunity to sell the
17 Real Property; and (6) it will allow Debtor to reduce its indebtedness by about \$55,000.00
18 (85% of net).

19 17. For all those reasons, the proffered sale and division of proceeds is an exercise
20 of Debtor’s sound business judgment.

21 VI. PRAYER

22 WHEREFORE, Debtor prays that:

- 23 1. The Motion be granted;
- 24 2. Debtor be authorized to sell the Real Property to Burdette A. Baylis, or nominee
25 (“Buyer”), for \$85,000.00—or to the highest bidder at the time of the hearing for such higher
26 and better price or terms as Debtor may obtain—as described herein;
- 27
- 28

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1 3. Debtor be authorized to pay customary costs of sale, broker commissions, up to
2 \$3,150 of Buyers closing costs, up to \$5,000.00 for necessary and needed repairs, and the Kern
3 County Tax Collector out of escrow;


4 4. Debtor be authorized to pay 85% of the net proceeds of sale to Mission Bank on
5 account of its lien, and retain 15% for the benefit of the estate;

6 5. Debtor's principal be authorized to execute additional documents as are
7 reasonable and necessary to effectuate the sale to Buyer or the highest bidder, and

8 6. Debtor be given such other relief as the Court deems to be just and proper.

9 Date: April 14, 2010

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By 
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